

EXHIBIT 12

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6 IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
7 IN AND FOR THE COUNTY OF PIERCE
8

9
10 GERRI S. COOGAN, the spouse of)
11 JERRY D. COOGAN, deceased, and)
12 JAMES P. SPURGETIS, solely in his)
13 capacity as the Personal)
14 Representative of the Estate of)
15 JERRY D. COOGAN, Deceased,)

16 Plaintiffs,)

17 vs.)

18 BORG-WARNER WORSE TEC INC.;)
19 et al,)

20 Defendants.)

Superior Court
No. 15-2-09504-3

21
22 **VERBATIM REPORT OF PROCEEDINGS**
23

24 Pierce County Superior Court
25 Tacoma, Washington
Before the

HONORABLE STANLEY J. RUMBAUGH

Raelene Semago
Official Court Reporter
930 Tacoma Avenue
334 County-City Bldg.
Department 3
Tacoma, Washington 98402

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T A B L E O F C O N T E N T S

February 23, 2017

TESTIMONY

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1 BE IT REMEMBERED that on Thursday, February 23, 2017,
2 the above-captioned cause came on duly for hearing before
3 the **HONORABLE STANLEY J. RUMBAUGH**, Judge of the Superior
4 Court in and for the County of Pierce, State of
5 Washington; the following proceedings were had, to wit:

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7 <<<<<< >>>>>>

8
9
10 (The following proceedings were held
11 outside the presence of the jury.)

12 THE COURT: Here is a phrase that I have been
13 waiting for a long time to use: Next witness.

14 MS. LOFTIS: And Your Honor, I have a few
15 issues.

16 THE COURT: Okay.

17 MS. LOFTIS: Okay. Right now we are
18 redacting, and I will show this to plaintiff's counsel,
19 this medical record that was marked as Exhibit 188 in its
20 unredacted form, and I believe that we have now removed
21 cirrhosis, drinking, from the medical record, and I would
22 like to have it marked as Exhibit 234 and entered into
23 the --

24 THE COURT: The redaction that you provided
25 earlier still mentions cirrhosis, so you are taking that

1 out?

2 MS. LOFTIS: Yeah, that should be out. I
3 actually gave you a copy where I thought that everything
4 was properly redacted, but it wasn't. So now we have
5 further redactions on this, Ms. Dean, with all the
6 whiteouts being additional redactions.

7 THE COURT: If you would show me the scrubbed
8 exhibit.

9 MS. LOFTIS: The scrubbed times two exhibit is
10 right there, and if she needs more time to look at it,
11 that's fine. We don't have to do it this second. I have
12 some other issues as well.

13 THE COURT: While we are on the topic of
14 Exhibit 234, which is a November 11, 2015, consultation of
15 Jerry Coogan by Dr. Glenn Nudelman, which has been
16 redacted to remove reference to smoking or to drinking and
17 liver cirrhosis, it seems like.

18 I will listen to any further objections if you
19 have them.

20 MS. DEAN: Your Honor, I don't think so. This
21 was just provided. Other than taking off the base label,
22 the ER 904 at the bottom and option of completeness, we
23 have some other records from this same facility that we
24 would like to include.

25 THE COURT: I will look at those if you want

1 to present them. I'm now focused on Exhibit 234.

2 MS. DEAN: As it relates to what was just
3 handed, as long as the agreement we had on removing the
4 Bates happens, the other redactions that were supposed to
5 have happened, they have happened.

6 THE COURT: Moving the dates --

7 MS. DEAN: These are his HMRCO.

8 THE COURT: I thought you said dates.

9 MS. DEAN: B-A-T-E-S.

10 THE COURT: HRMC, I mean, does that really
11 matter? I can see ER, because they have heard about ER
12 and so I will take that out. I mean there is some other,
13 HRMC. I don't know. That sounds like some regional
14 medical center. It's their document.

15 MS. DEAN: The document 55 on the top and
16 bottom, again, wasn't as much of a concern as the internal
17 GPC Bates that is right below it.

18 THE COURT: So what I'm going to do is take
19 the G -- or the ER and just Xing it out. And now I will
20 have Ms. Reagan white out and X out, and I will admit 234.

21 (Exhibit No. 234 admitted.)

22 MS. DEAN: And to complete the document, we
23 will just do that at a later time, Your Honor?

24 THE COURT: Yes. Get together and make sure
25 that it's scrubbed.

1 MS. LOFTIS: Thank you, Your Honor.

2 THE COURT: Thank you.

3 Go ahead, Ms. Loftis.

4 MS. LOFTIS: Sort of a big issue, Your Honor,
5 and then a little issue. So which one do you want first,
6 Your Honor?

7 THE COURT: You pick.

8 MS. LOFTIS: I will pick. So we have had this
9 continuing concern with Liane Brewer, Your Honor. She was
10 handed a subpoena that was invalid. The plaintiff's
11 counsel has never sought to serve her with a valid
12 subpoena. She works and resides in Spokane, and they have
13 never provided her with a witness fee. Additionally, we
14 expect that any testimony that is going to be offered by
15 plaintiff or asked of Ms. Brewer by plaintiff is going to
16 be cumulative of the testimony that Byron Frantz already
17 gave over the course of two separate days.

18 The other concern that I have, Your Honor --

19 THE COURT: Can we address that because I
20 thought that Byron Frantz was the corporate representative
21 and, so is -- I'm sorry --

22 MS. LOFTIS: Liane Brewer. She was served,
23 Your Honor, with a subpoena in her own name. She was not
24 served as a corporate representative, and also she has not
25 been disclosed as a witness for plaintiff's counsel in

1 this case.

2 THE COURT: Didn't we have a discussion about
3 the fact that she would be a corporate representative
4 related to the specific interactions she had with Jay
5 Coogan, because she was 20 years, plus or minus, visiting
6 his NAPA facility?

7 MS. LOFTIS: She did, Your Honor. She
8 provided her deposition testimony in response to a
9 30(b)(6) request, but we are now here at trial and
10 30(b)(6) has no application to a trial witness. So right
11 now we are here either under 43(f), which was untimely
12 served, and a witness has already been provided in
13 response to 43(f), or we are here under a subpoena that
14 was improperly served. They have had plenty of time and
15 notice to correct that deficiency, and they haven't done
16 it, nor have they provided the witness with a fee and
17 travel expenses, et cetera.

18 THE COURT: We are also here with her sitting
19 at counsel table where parties sit, and within the
20 jurisdiction of the Court. So I can order her to testify
21 right this very minute.

22 MS. LOFTIS: Right, and Your Honor, and she is
23 here pursuant to the Court's order. And she is -- has
24 been a representative at the table. But what we are
25 really getting to is whether she should be compelled to

1 testify in this case when she is not listed as a witness
2 on plaintiff's witness list, when she hasn't been provided
3 a proper subpoena, and when we have already provided a
4 corporate witness in response to a defective 43(f).

5 THE COURT: Ms. Dean.

6 MS. DEAN: Your Honor, I want to hand up to
7 the Court the notice of deposition, videotape deposition
8 of Ms. Brewer. I feel like this has been discussed at
9 length, so...

10 THE COURT: So we are not -- I understand she
11 has been deposed. Everybody had a run at it and got to
12 ask --

13 MS. DEAN: It's for a different purpose. In
14 the actual determination notice for Ms. Brewer that
15 occurred, the agreement that I showed in emails and in
16 other places is actually stated. The Court agreed with me
17 that they would bring someone live, but said there is some
18 ambiguity. There was none. And it was because -- I
19 didn't give you the full information, but, Your Honor, it
20 was Exhibit A to the notice of her deposition. It is
21 written, GPC will produce their witness to testify live in
22 trial at this lawsuit.

23 And then to make it even clearer at the
24 beginning of that deposition the videographer states, we
25 are on the record, this is a 30(b)(6) videotaped

1 deposition of Genuine Parts, and I confirm on the very
2 next page she is that representative.

3 THE COURT: Hang on just a second. All right.
4 So do you have a copy of this, Ms. Loftis, the Plaintiff's
5 fourth Amended Notice of Videotape Deposition.

6 MS. LOFTIS: Your Honor, I have seen it
7 before.

8 THE COURT: So what it says is, witness and
9 it's a designation deposition. I'm under the impression,
10 correct me if I'm wrong, that in response to this notice
11 it was Ms. Brewer whose deposition was taken. I believe
12 that that is correct, correct?

13 MS. LOFTIS: Yeah, Your Honor, we complied
14 with the discovery request, and there's been no complaints
15 about that.

16 THE COURT: And then it says GPC/NAPA will
17 produce their witness, presumably related to their witness
18 in this, you know, this video deposition, to testify live
19 at trial in this lawsuit. I understand there have been
20 timing issues that affects the trial from almost the very
21 beginning. But your position is that that is insufficient
22 notice of trial attendance to tell Ms. Brewer to be here.
23 I don't want to misstate your argument.

24 MS. LOFTIS: So we are now at the agreement
25 between counsel about what we would do, and the agreement

1 between counsel is that we would produce a witness live in
2 this case. And we have done that over the course of two
3 days. We produced Byron Frantz.

4 Ms. Dean was well aware that the witness that
5 would come out here and testify was Byron Frantz. She has
6 known about that since day one of this trial. We
7 conferred about the date that he would come, and in fact,
8 that is why she served Liane Brewer in Liane Brewer's name
9 with a defective subpoena, because she knew that there was
10 no agreement to provide Liane Brewer as a witness in this
11 case. Otherwise, there would be no reason for her to
12 provide a subpoena.

13 THE COURT: Well, except out of an abundance
14 of caution perhaps, but more to the point, Ms. Brewer is
15 sitting here as a party at counsel table. She has been
16 here for days, and she has been deposed, so she has fair
17 notice of what this is all about. She has listened to the
18 testimony. And because she is now within the jurisdiction
19 of the Court as a party, I can order her to testify right
20 now, and if that's what the next witness is going to be,
21 then that's what it will be.

22 MS. DEAN: Yes, Your Honor, and just for
23 purposes of scheduling, our intent is only to ask about
24 the same exact subjects that were identified in this
25 notice.

1 THE COURT: And not crossing over to
2 Mr. Frantz. And then Ms. Loftis is correct, we don't need
3 two witnesses to testify about the same thing.

4 MS. DEAN: I'm saying within the distinctions
5 that they drew and accepting those and the type of notice.

6 THE COURT: So Ms. Loftis, was that the big
7 issue, or was that the small issue?

8 MS. LOFTIS: That was the small issue,
9 Your Honor.

10 THE COURT: Okay. What's the big issue?

11 MS. LOFTIS: When we gave the Court an
12 indication of how long this case would take, Your Honor,
13 my recollection --

14 THE COURT: You mean when you told me that you
15 would be done by the end of this week, or more recently by
16 the end of next month?

17 MS. LOFTIS: Before the case started, so
18 ancient history, I guess at this point.

19 THE COURT: All history is ancient, it's just
20 a matter of degree.

21 MS. LOFTIS: So we told the panel of
22 prospective jurors, Your Honor, that the trial was
23 expected to take three to four weeks to try, and that they
24 should check their calendars into the fifth week. And as
25 the Court is well aware, we are now in the fifth week of

1 this case with no particular end in sight to plaintiff's
2 case in chief.

3 We feel that we have been severely prejudiced
4 by the length of time that we have remained in plaintiff's
5 case in chief. Your Honor, I have tried asbestos cases
6 before. They have routinely taken 13 to 15 court days to
7 try. I have never tried a case against Dean Omar before
8 this trial started. I had done no research in terms of
9 figuring out how long a trial involving Dean Omar
10 typically takes, but it's now my understanding from
11 talking with counsel across the country that this is not
12 unusual for a case involving this particular counsel to
13 take three times to four times longer than a normal
14 mesothelioma case.

15 So I, you know, I realize, Your Honor, that I
16 could have done that research ahead of time and tried to
17 provide you and the prospective jurors a better
18 understanding of the time constraints, but not only did I
19 not put aside ten weeks to try this case, but I'm
20 concerned, Your Honor, that you have not put aside ten
21 weeks to try this case, your staff has not, and I
22 understand that as officers of the court, it seems like
23 you guys are willing to go forward with that, despite the
24 doubling of the time limit.

25 But I'm concerned and I would like the jurors

1 to be asked what type of hardship this now presents, and I
2 don't want to invest any more of my client's money or time
3 on this case that has really no hope, in my opinion, of
4 being successfully completed.

5 We are not in a position to accept less than a
6 full jury panel on any verdict that comes down in this
7 case. I do not have client authority to take a verdict of
8 less than 12 jurors, and I'm concerned, Your Honor, and I
9 would move for a mistrial at this point rather than
10 continuing to invest time and money, and I would ask the
11 Court to award costs to us from the Dean Omar firm with
12 them knowing their own track history, knowing how long
13 that they would take with witnesses. It's unprecedented,
14 Your Honor, to have a company witness on the stand for two
15 days or to have Dr. Brodtkin on the stand for two full days
16 in plaintiff's case in chief.

17 THE COURT: Well, I would observe a couple of
18 things before I hear from you, Ms. Dean.

19 MS. DEAN: Sorry?

20 THE COURT: The prolonging of the testimony,
21 particularly of Dr. Brodtkin, was not necessarily
22 occasioned to merely be requested by plaintiff's counsel.
23 All counsel asked questions in great detail, in my view
24 greater detail than is required, and in the jury's view
25 I'm sure that they were lost in a welter of facts and

1 figures that they -- to the point where they quit
2 listening, but you make your presentations the way you
3 want to. You know, I have only observed that I have been
4 a jury watcher for many years, for a long time, and that's
5 my perception.

6 As far as a mistrial, we still have 13 jurors.
7 Nobody has told me they are going to bail, and in fact,
8 Juror No. 13, you know, kind of struggled through her
9 illness and she is ready to hang with us.

10 As far as the timing of the trial, there is no
11 authority that I know of that allows a state court judge
12 to regulate the length of time that a trial is going to
13 last. I mean we are here. Yes, I do have other things to
14 do, just like everybody else. But the way it works in
15 this country is that when your case gets started, you
16 know, you have got the floor, and what you do with it,
17 assuming that, you know, the testimony is all relevant, is
18 up to you. However long they take, however long they
19 take -- I tried a child rape case. I thought that it
20 would take three weeks. It went seven. This is not
21 unprecedented. Things sometimes take longer than
22 predicted. And so it's -- I appreciate your frustration,
23 and you know, to some degree I share the concern that this
24 is lasting way longer than it should, but you know, I have
25 no legal authority to curtail anybody's presentation.

1 You know, it's not like federal court where I
2 can tell you, you have another hour with this witness and
3 then you are done. That would most certainly result in a
4 reversal and a note the from Court of Appeals saying have
5 you read the rules lately.

6 MS. LOFTIS: Your Honor, what I'm suggesting
7 is that we do a do over, that we give the jurors the
8 courtesy of a more accurate representation of how long
9 this case lasts, and that we get 14 jurors who have time
10 to sit for ten weeks. I'm concerned, Your Honor, that you
11 are going to get short with us, not that we have seen any
12 of that, but I'm concerned that that could happen, you
13 know, as this thing goes into the sixth and seventh and
14 eighth and ninth and tenth week. And at this point we
15 have got witnesses scheduled all the way through the end
16 of March. We have scheduled our witnesses for two days a
17 piece, given the amount of questioning that we expect to
18 happen. We have never done that in a normal case.

19 THE COURT: Well, I don't know what -- each
20 case is its own case. So I have never been able to
21 discern any pattern really, and you are dealing with
22 personal injury cases. They are personal to the people
23 who were injured and they take however long they take.
24 And so as far as a do over, I don't see how that gains you
25 any time because if the next trial is this long, just

1 because you have jurors that have been advised it's going
2 to be two months instead of one month, you have just lost
3 a month and \$150,000 per party or more in costs and fees
4 and expenses. Obviously, there has been an economical --

5 MS. LOFTIS: Well, its the prejudice, Your
6 Honor, with --

7 THE COURT: What's the prejudice?

8 MS. LOFTIS: The jurors were told five weeks,
9 and plaintiff has taken up the entire five weeks with her
10 case. In fact, she is going to take up six weeks with
11 just her case. So as the jurors are looking at their
12 calendars, looking at their inconvenience, it will be us,
13 the three defendants that pay the price for plaintiff
14 taking up the entire estimated time and some.

15 THE COURT: I don't know how you -- I don't
16 know how the length of time somehow equates to the
17 defendants bearing some sort of burden of the jurors in
18 duration of time.

19 First of all, none of them are complaining
20 about the duration of time. They just want letters to
21 their employer to verify that they are still here, not in
22 Mexico, or doing whatever they want.

23 MS. LOFTIS: Do they know, Your Honor, that we
24 have witnesses scheduled through the end of March and the
25 beginning of April? That's the conversation I would

1 rather have today than two or three weeks from now.

2 THE COURT: We have told them that the trial
3 is likely to last into the first week of April.

4 Anybody else have anything to add?

5 MS. DEAN: Your Honor, yes.

6 THE COURT: Because every time you add, you
7 waste time. I have already ruled against the mistrial.

8 MS. DEAN: I know. I won't take longer than a
9 minute, but when there is stuff said in front of witnesses
10 and family I want to indicate that in the 12 cases I have
11 tried when I have done this, I have never gone over four
12 weeks. And second, the issue of timing in this case that
13 other parties related, I think could be directly tied to
14 witnesses that weren't prepared in violation of Washington
15 rules, which is something that we want to talk about in
16 the examination time, the defendants. And finally, I want
17 the record to be clear on this. I offered, and the
18 defendants rejected, agreed upon time limits.

19 If there is any direction that the delay in
20 trial is driven by the plaintiff's side, I can attach that
21 as an exhibit, but the claims by Ms. Loftis are made
22 without any evidence, without any evidence whatsoever, and
23 are inaccurate and offensive. And I just wanted to make
24 sure that the record and the people in this room were
25 aware that she is making things up.

1 THE COURT: Thank you, Ms. Dean.

2 Mr. Massenburg, do you have anything to add?

3 MR. MASSENBURG: We have plenty of time to
4 talk about our issues later, Judge.

5 THE COURT: Well, that's sort of the issue.

6 Mr. Adams.

7 MR. ADAMS: Since Ms. Brewer is testifying
8 next as the corporate representative for --

9 THE COURT: As a corporate representative.

10 MR. ADAMS: I wanted to just re-raise the
11 briefing that the parties submitted at the beginning of
12 this week. I think on the discussion we had about a jury
13 instruction about what a corporate representative is.

14 THE COURT: And I appreciate that you are
15 bringing that to my attention. I think the appropriate
16 time to do that is when we instruct the jury. I don't
17 like giving piecemeal instructions during the trial. It's
18 better to have them all at once so I can give it to them
19 in writing, and they can refer back to those.

20 Mr. Walden, I don't want to cut you out of the
21 earlier conversation. You might as well --

22 MR. WALDEN: I have nothing to add to that.

23 THE COURT: -- comment.

24 MR. WALDEN: But I do have a couple of things
25 very briefly. First of all, I don't want the record to be

1 silent or to reflect silence from me in terms of the
2 discussion earlier about some of the evidence and the
3 reference to aspersions being cast upon plaintiff's
4 counsel. The intent behind a lot of my cross examination
5 into evident holes in the evidence is part of my
6 responsibility to defend the case, lack of the fiber
7 burden analysis when the literature recognizes that's a
8 useful tool, experts agree to that, lack of this testing,
9 that just goes to defending the case. I did not -- in the
10 case that the Court was sensitive to my being
11 unprofessional in some way, that was not my intent.

12 THE COURT: I didn't perceive that. The Court
13 is not particularly sensitive. The Court is not
14 particularly irritable, I don't think. I, you know, want
15 to make sure that we can do this in as efficient of a way
16 as possible. At the same time, I do find it necessary
17 because it is my role to enforce the rules of evidence,
18 and trial procedure, and you know, if I have to make that
19 point with certain emphasis, then that's what I'm going to
20 do.

21 As far as, you know, just on your point, yes
22 the digestion studies, you know, we had at least three and
23 maybe four different occasions where it was determined
24 that there were no digestion studies, that the defense
25 didn't have an opportunity to do them. You can argue

1 about the timing, but the timing of death related to the
2 filing of suit had something to do with that.

3 I gave the instruction that there is no law in
4 Stevens County that requires an autopsy to be performed.
5 You are free to argue whatever you want to infer from
6 that, but I don't really think that the point needed to be
7 made three or four times, and that is what has contributed
8 to the trial being longer than everybody, I think, would
9 desire. And I just call that to your attention because it
10 is a good illustration of cumulative testimony, and it may
11 have a different slant from different counsel, but at the
12 end of the day, the information that the jury could have
13 perceived if they were given it once, as opposed to three
14 or four times.

15 MR. WALDEN: The other item, Your Honor, is so
16 simple you are going to appreciate it. I think that is
17 that the videotape of the gasket removal has been now
18 loaded onto a memory stick and has been marked as an
19 exhibit, and I wanted the record to reflect that.

20 THE COURT: Exhibit what?

21 MR. WALDEN: It is Exhibit 235.

22 THE COURT: All right.

23 MR. WALDEN: And this was the video that was
24 played on January 30th, 2017, in the afternoon in the
25 beginning part of Dr. Brodkin's testimony.

1 THE COURT: Thank you for completing the
2 record.

3 MS. LOFTIS: Your Honor, the third issue, so
4 we do have a copy of the subpoena that we would like to
5 serve on a witness that resides in Spokane County if I can
6 hand this to Ms. Reagan. And I will give a copy to
7 plaintiff's counsel.

8 THE COURT: All right. So this is a subpoena
9 for Lyle Kenworthy requesting his presence at trial on --
10 I don't see a date. I don't see a date, except for right
11 on the front of it. March 6th. Okay.

12 You are asking the Court to sign the subpoena?

13 MS. LOFTIS: Yes.

14 MS. DEAN: Your Honor, can I be heard?

15 THE COURT: Yes.

16 MS. DEAN: This is a witness name that I saw
17 for the first time when I got the schedule, which at some
18 point it is a witness not identified on any witness list.
19 I believe a subpoena, until there is a motion for leave to
20 amend a Jones inquiry made, a deposition of this person
21 done is premature.

22 I have learned since I was given this
23 information yesterday, not in a courtesy email or in a
24 conversation, but just a person on a list, I had never saw
25 before, that this is a gentleman in his 80's that I've

1 never spoke to and that's literally all I know. And so
2 while we have a live witness here, I think we can handle
3 this later by signing a subpoena for a nondisclosed
4 witness that's never been deposed, I don't believe is
5 appropriate.

6 MS. LOFTIS: That's misrepresenting the
7 record.

8 THE COURT: Ms. Loftis wants to do this so it
9 will be timely for the service, so that if, indeed, I
10 ultimately decide this individual is to testify, that she
11 doesn't hear about the dispute in time. We can deal with
12 the issues about the rest of the issues and whether there
13 is a proper disclosure and whether this witness has
14 anything noncumulative to add in due course, but I
15 appreciate Ms. Loftis' concern about timing. On that
16 basis, given the fact that the proper fees appeared to be
17 tendered, I will sign the subpoena. And again, that's not
18 going to limit your objection, if you have one, to this
19 individual being permitted to testify, and we can deal
20 with that in due course.

21 MS. DEAN: Five weeks in a trial will bear out
22 what this is about at some point.

23 THE COURT: We can go through the Jones
24 factors. They almost universally mitigate in favor of
25 allowing the testimony under circumstances. It's not

1 scheduled for another two weeks, plus. So if you need to
2 interview this person, or if you need to take a short
3 deposition, you know, I will allow that to be done by
4 phone. You can call him up, and if he will willingly talk
5 to you, you can get the location information.

6 All right. Was that the little issue?

7 MS. LOFTIS: That is the third issue that I
8 didn't even note. I appreciate your patience.

9 THE COURT: Ms. Dean.

10 MS. DEAN: Your Honor, the only thing that we
11 talked about with Mr. Frantz where this is somewhat unique
12 in that -- and this was their client, we agreed that they
13 didn't have to show me their exhibits or Power Points
14 until after I was done, so they didn't have to preview.
15 So do I just ask or request a break when I am done,
16 Your Honor, so that we can do that?

17 THE COURT: Sure. I'm not sure how long it's
18 going to take --

19 MS. DEAN: It won't take long.

20 THE COURT: -- but it's not moving forward very
21 fast right now.

22 So if we are ready to go? Ms. Loftis, are you
23 ready?

24 MS. LOFTIS: Yes.

25 MR. MASSENBURG: Yes.

1 MS. LOFTIS: Can she go up in the witness
2 stand, Your Honor?

3 THE COURT: I will have her called.

4 (The following proceedings were held
5 in the presence of the jury.)

6 THE COURT: Your next witness.

7 MS. DEAN: At this time I would like to call
8 corporate representative for Genuine Parts Company Liane
9 Brewer.

10 LIANE BREWER, having been first duly sworn to
11 tell the truth, the whole truth
12 and nothing but the truth,
13 testified as follows:

14 THE COURT: Please have a seat and tell us
15 your name and spell your full name.

16 THE WITNESS: Okay. Yes, my name is Liane
17 Brewer, and you spell my name L-I-A-N-E, B-R-E-W-E-R.

18 THE COURT: All right. You may proceed,
19 Ms. Dean.

20 DIRECT EXAMINATION

21 BY MS. DEAN:

22 Q. Good afternoon.

23 A. Hi.

24 Q. You understand that today we wanted to understand certain
25 things about Genuine Parts Company, and we listed out

1 topics that we cared about and you were picked as the
2 corporate representative for those topics.

3 A. One of the corporate representatives, yes.

4 MS. LOFTIS: Your Honor, that notice was
5 served for a deposition. That's not served as part of
6 trial testimony.

7 THE COURT: You may want to amend your
8 question, Ms. Dean.

9 BY MS. DEAN:

10 Q. And we had an opportunity, you and I, to discuss what you
11 knew about certain areas before you came here for trial?

12 A. During the deposition?

13 Q. Yes, ma'am.

14 A. Yes, ma'am.

15 Q. Okay. I want to just talk to you about some of those
16 things today so the jury can hear them.

17 A. Sure.

18 Q. First of all, where are you from?

19 A. I'm from Spokane, Washington.

20 Q. And where have you worked for the last 32 years?

21 A. At Genuine Parts Company in Spokane at the distribution
22 center.

23 Q. And in terms of that distribution center in Spokane,
24 that's the closest distribution center for the NAPA stores
25 in Kettle and Colville, right?

1 A. Yes. We service both of those stores out of that
2 distribution center.

3 Q. And you are in a unique position in that you are a witness
4 who actually knew Nancy and Jay before this lawsuit ever
5 began?

6 A. Yes, ma'am.

7 Q. You have known the Coogans, Jay and Nancy, for years?

8 A. You know, I haven't had a personal relationship with them
9 for years, but I have definitely worked with them through
10 my job capacity at the distribution center.

11 Q. For over ten years?

12 A. Yes, closer to that. Yes, we have talked on the phone for
13 years, got to meet them personally as the sales manager
14 when I became the sales manager.

15 Q. And in terms of just your work history with the company,
16 my understanding is that you started in 1984?

17 A. Yes, that's true.

18 Q. That you worked there for over 13 years before being
19 promoted to the inventory control manager?

20 A. Yes, ma'am.

21 Q. And then you were promoted in 2011 to be a sales manager?

22 A. Yes, ma'am.

23 Q. And currently as of 2014 you are the operations manager?

24 A. Yes, that's true.

25 Q. As an inventory control manager, did you handle only some

1 of the inventory that was going from the distribution
2 center to all of the stores, or all of it?

3 A. Well, that's kind of a broad question, so basically as the
4 inventory control manager my job was to try to make sure
5 we had product in the distribution center so we could
6 service them at a high fill rate. We call it a shipping
7 percentage, so we try to ship a hundred percent, and
8 depending on how well we do, we maybe miss -- in years
9 past, I think we were about 94 percent. Right now we are
10 up to about 97 percent in that operations job, and then
11 inventory counts to make sure that accuracy was correct.
12 So I didn't actually physically go count the product. I
13 had a team of people who did that. I didn't physically do
14 that. It was just making sure that it was in the building
15 so that we would service it. Sorry. I talk with my
16 hands. So sorry about that.

17 Q. No, that is fine. The inventory that was being sent to
18 the different NAPAs, was it physically held at the
19 distribution center where you worked?

20 A. Some of it was. We carry about 115,000 skews at the
21 distribution center. But our corporate skew count is
22 about 475. So, if we have it in the distribution center,
23 we do send it from there, yes.

24 Q. And you said that you dealt with a team of people. How
25 many people were you working with when you were the

1 inventory control manager?

2 A. As far as counting the inventory, or --

3 Q. Yes.

4 A. We have three to four people who perpetually count the
5 inventory.

6 Q. And even before you started working at the distribution
7 center, you have other experiences with NAPA stores,
8 right?

9 A. I do. My dad was an independent owner from the time I was
10 seven. So you can call me a NAPA brat if you want to call
11 it that.

12 Q. And even though your dad was a store owner for years, you
13 weren't ever the person that was physically handling the
14 friction parts, or the gaskets, right?

15 A. Well, are you talking about installing? No. My dad was
16 just like Jay Coogan, he owned a NAPA store. My dad
17 bought it when I was seven. He didn't believe in child
18 labor laws, so we all got jobs. There were six of us.
19 And so we all had jobs that we had to do. Whether it was
20 sweeping the floor, I think I started at loading the pop
21 machine.

22 I did not open the boxes and touch the parts.
23 Basically if inventory came in, we put it away, and I did
24 a lot of driving in my younger days when we first started
25 to drive.

1 Q. One of the things that you just mentioned that I wanted to
2 ask about is what you said is you took the product and put
3 it away. Is it fair to say that you would put the product
4 on the shelves and stock orders almost daily for some of
5 that time?

6 A. Usually there would be daily stock orders, yes.

7 Q. Whether being from when you were working at the company
8 for many years, including the years in the 80s and 90s, or
9 in that time that you were stocking parts for your dad,
10 the child labor, you never even knew asbestos parts were
11 being sold?

12 A. No.

13 Q. You never saw a warning that stuck out and said, hey, we
14 have a problem with cancer?

15 A. I can honestly say I never really paid attention. I was
16 young, into my teens, so girls and boys and things like
17 that were a little more important.

18 Q. Even when you were working for the company in 1984 and
19 going into 1997 as inventory control manager, you didn't
20 know that some of the inventory that was being sold
21 through the NAPA distribution center you worked at
22 included a variety of asbestos products?

23 A. No, I normally in the years that you are suggesting, '84
24 to '97, I worked in the office. So all of my jobs did not
25 involve going to the stock room or handling product. When

1 I worked in the office it was taking care of customer
2 calls, like if Jay and Nancy called, if that was during
3 their period of time, it was issuing credits, releasing
4 tickets because back then everything wasn't automated. So
5 most of my job would not have entailed any of that.

6 Q. So even if we go to when you became inventory control in
7 the years 1997, 1998, 1999, 2002 and 2001, the last year
8 that Mr. Frantz indicated that asbestos was being sold?

9 A. Uh-huh.

10 Q. You weren't aware that in the inventory that you helped
11 control there was a variety of asbestos products that were
12 being sold by NAPA?

13 A. The only place that we would be aware of that would be if
14 there was information on the MSDS sheets, and like I said,
15 I have worked in the office so it wasn't like I was
16 installing, so there was no hazard that I knew of, no.

17 Q. Their catalogues that are in evidence, including
18 Exhibit 98, that indicate as late as 1994 in the
19 catalogues in the Colville store, asbestos parts are
20 listed. That's not something that you were aware of until
21 this lawsuit?

22 A. No.

23 Q. Your role as an operation manager, and even as a sales
24 manager, involved having contact with the local small
25 business owners, the jobbers that were in the NAPA stores,

1 right?

2 A. Yes.

3 Q. And the way that you would describe those people are small
4 business owner's?

5 A. Those are my words. They are all independent owners, but
6 no franchise agreements, and so basically they are out
7 running their business the way they do as a small
8 business, yes.

9 Q. People like your father, people like Jay Coogan?

10 A. Yes.

11 Q. You had a direct line of contact with those people, right?

12 A. By phone initially.

13 Q. Yeah.

14 A. And then as the sales department in 2013 when I became the
15 sales manager, yes. I was in the field probably about
16 60,000 miles a year, so, yes, I was in the field.

17 Q. A lot?

18 A. Uh-huh.

19 Q. There are times in your job where you would have daily
20 contact with some of those small business owners, and
21 sometimes it would only be every few weeks, but it was a
22 regular constant contact, right?

23 A. Well, we had 92 stores that we served out of the
24 distribution center in Spokane, so in the guise of a sales
25 manager, I always had my phone with me, so if they and

1 questions and stuff like that they could always contact
2 me. But as far as individual visits, you know, given the
3 geographics of our area, so it's the Canadian border,
4 Kelso, White Fish area clear down to Boise, Idaho, if you
5 are familiar with that, and then Missoula to the
6 Tri-Cities. So quite a few miles geographically to get to
7 all of those stores.

8 Q. That's how you got to the 60,000?

9 A. Yes, ma'am.

10 Q. And my point is that sometimes by phone, less often in
11 person, for each one of those 92 stores you indicated that
12 you had sometimes daily and at the very at least monthly
13 contact with those small business owners?

14 A. I did my best, yes.

15 Q. First of all, you were never equipped in those times when
16 you are talking to a person on the phone, or you are in
17 their store talking to them personally, to give any
18 information about asbestos and its hazards because you
19 didn't know it, right?

20 A. That was during a time period that I wasn't involved in
21 it. So the time I was in the field was 2011.

22 Q. Okay.

23 A. So that was well after any time that you are talking
24 about, yes.

25 Q. Then let me back up to others. You are aware that there

1 were manufacturer representatives --

2 A. Yes.

3 Q. -- that were sent out from the NAPA distribution center,
4 even before you got there, so going into earlier years,
5 that would go to the stores?

6 A. The manager reps were actually representatives of the
7 manufacturer, so at that time frame, early on, they
8 actually were employed by the manufacturer. They did have
9 permission to go into our field and work with our
10 customers, and they worked with everything from, you know,
11 making sure they have the right inventory in their stores
12 because each independent owner did have the ability to say
13 this is how much money I want to put in overall inventory
14 expense, and so they worked on their inventory to make
15 sure that they had the right inventory. They worked on
16 product information. They went to their customer service
17 events, or customer appreciation events I should say.
18 They actually were trying to be available to help them
19 grow their business, worked with their installers as well.

20 Q. And when you say "permission," they obtained permission to
21 go to these NAPA small business owners through who? Who
22 gave them permission?

23 A. Well, I would say it was information that was done by our
24 corporate office in Atlanta. They knew these people were
25 hired, and they were given the information and the

1 territory that they served, so I guess that I would say
2 that's probably something that was directed through our
3 Atlanta office.

4 Q. And so the Atlanta office of Genuine Parts Company
5 permitted people to go on site and talk to the small
6 business owners?

7 A. I would say that, yes, that's true.

8 Q. When we first talked there were copies of these manuals, I
9 don't think the originals, but you are aware that not in a
10 single manual that was ever found in the Colville or
11 Kettle store is there any warnings about asbestos?

12 A. Well, that's information that's just been gained since we
13 had our deposition. I mean, that's information you gave
14 me. I haven't researched it because that's really what
15 Byron would cover.

16 Q. Let me ask you in terms of the representatives, you would
17 agree with me that as opposed to writing something
18 somewhere in a catalogue, and I think I called it a manual
19 before, a catalogue, it is for most people much more
20 effective to have personal, one-on-one contact, to explain
21 real hazards?

22 A. Yes, ma'am, but --

23 MS. LOFTIS: Your Honor, just a second.

24 Objection.

25 THE COURT: Legal grounds?

1 MS. LOFTIS: Okay. The legal grounds for my
2 objection is it calls for an expert opinion on warnings.

3 THE COURT: Sustained.

4 BY MS. DEAN:

5 Q. The opportunity to talk to people face-to-face, to
6 communicate information when you can make eye contact,
7 when you can have question and answer, existed for GPC and
8 the small business owners they work with?

9 MS. LOFTIS: Objection; argumentive.

10 THE COURT: That's not argumentive. It either
11 did or didn't exist, so I will allow the question.

12 THE WITNESS: Actually, the representatives
13 were out in the field, but I don't know that they didn't
14 have the communications, because honestly, that was well
15 before my time out in the field. I mean, they very well
16 may have done that. You know, I don't have a yes or no on
17 that because I wasn't there in '74. I was in elementary
18 school, you know, so...

19 BY MS. DEAN:

20 Q. When Mr. Coogan testified, and you were here, that he
21 never had anything like that, do you have any reason to
22 doubt that based on what you do know?

23 MS. LOFTIS: Your Honor, asks this witness to
24 comment on another witness's testimony.

25 THE COURT: No. The question was: Did she

1 have any knowledge that manufacturers reps were given
2 permission to visit the store owner before her time.

3 MS. LOFTIS: Okay. Sorry, Your Honor. I
4 thought she said something about Jay Coogan's testimony.

5 THE COURT: That's not how I interpreted the
6 question.

7 THE WITNESS: Can you ask it again?

8 BY MS. DEAN:

9 Q. Sure. Even before your time, do you have any basis to
10 dispute at all that that information did not get to
11 Colville and Kettle that people weren't in the 60s, 70s,
12 80s, 90s being warned of asbestos?

13 A. Well, I think Jay became the owner in the early 90s. So
14 the 60s, 70s, 80s wouldn't really apply. And my guess
15 from what I know about a manufacturer rep is they do
16 everything they can to inform the jobber about all things
17 product wise. Now, whether they talked about asbestos or
18 not, I can't say one way or another, but the 70s, 80s and
19 90s wouldn't even apply to Jay, so he wouldn't during that
20 time.

21 And then as he became the store owner, I don't
22 know if they did or didn't have a conversation. It's very
23 possible. It's very possible not. I'm sorry. I can't
24 answer you one way or another.

25 Q. Are you aware that the person that had the cancer wasn't

1 Jay, but his brother, Doy?

2 A. Yes.

3 Q. And that Doy Coogan, from the information we learned, was
4 getting parts from NAPA stores in the 60s, 70s and 80s,
5 not just the 90s, when Jay had the store?

6 A. That's what I'm understanding in this case, yes.

7 Q. Even if we go back to what you personally do know, was
8 there ever any indication from your own father that
9 anything that you were working around was dangerous or
10 carcinogenic, ever?

11 A. There was no information to me that anything was
12 dangerous, no. I mean, as we put away freight in boxes,
13 we weren't hanging the parts, and so I'm not sure that it
14 would have come up at all.

15 Q. I want to ask you a few questions about Jay and Nancy
16 Coogan from the time that you knew them. You were not
17 provided the three days of deposition testimony that Jay
18 Coogan went through, correct?

19 A. I have not read it, no.

20 Q. Okay. So when you are considering information about Jay
21 and what he was like before this lawsuit, it's limited to
22 what you personally know, correct?

23 A. Yes. Yeah.

24 Q. When you were picked out of all of the people to be
25 representative for these issues, did you make any effort

1 to talk to other people so that you could learn anything
2 about the time frames before you were involved?

3 A. Well, I think what I was asked to do was to talk about
4 what I knew. I wasn't asked to do research, and so just
5 like research to me, it's really important to make sure
6 that it's correct, and so I felt like if I came and
7 answered what I knew, that would be the best that I could
8 give you.

9 Q. So no one before you came said, look, it's really
10 important that you research what is known or know about
11 the company, about the --

12 A. No, because I was asked just to talk about the
13 relationship between the distribution center and the
14 jobbers and explain what their customers were, and if we
15 reached into that because Jerry, or Doy as you call him,
16 would have been a customer of the Colville store. We
17 wouldn't have normally interacted with them.

18 Q. So in terms of understanding that relationship and time
19 frames before you got there, no one asked you to do any
20 research to do anything to find out what the company knew?

21 MS. LOFTIS: Objection, asked and answered.

22 THE COURT: It was asked and answered.

23 Sustained.

24 BY MS. DEAN:

25 Q. What you do know in all the time that you worked with Jay

1 Coogan is that there is not anything about how he
2 conducted his business that you would find unreasonable?

3 A. No, I would say for the most part, no. We did have a
4 couple of conflicts on a couple of issues, and we had to
5 work through them. I would say that all of our
6 independent owners are business people first. There is no
7 franchise agreement, so we have no real ability to tell
8 them how they are going to stock their store, or face
9 their stores, and so there were a couple of times when I
10 think that you brought up the deal with the batteries.
11 You know, there were issues involved with that.

12 Q. And so I just want to differentiate two things. There
13 were some times where there was tension between the
14 distribution center and Jay Coogan?

15 A. Not necessarily tension. I would just say that it's
16 clarification of matters. When you work with somebody,
17 everybody has their own set of ideas how things should
18 happen. Then there is communication that could just solve
19 it.

20 Q. And the one that stuck out in your mind was that he was
21 selling nonNAPA batteries and the NAPA distribution center
22 didn't like that?

23 A. I don't think I said the NAPA distribution center didn't
24 like it. I said he had the choice of what he stocked,
25 what inventory he stocked, and that came up because they

1 have the ability to go to any other vendor in Spokane, or
2 elsewhere, and bring inventory in. We would just call
3 that nonNAPA inventory. We don't price it. We don't
4 support it in our computer system, but they have the
5 ability to do that, and that's when that came up is he
6 took a whole product line because of the situation that
7 had come up, and he decided he wanted to stock the
8 competitors. We don't go back up into his territory and
9 sell NAPA batteries to his customers. We just lose that
10 market, so it isn't something that we, like A-1
11 Distributors, because they are another distributor in
12 Spokane, they sell to everybody in the territory, we don't
13 do that. We are solely loyal to our customers. Does that
14 make sense?

15 Q. Well, I'm just wondering if you remember my question.

16 A. Okay. Do you want to ask it again?

17 Q. Sure. One of the conflicts that you remember that stuck
18 out is he was selling nonNAPA batteries, and the NAPA
19 distribution center noted that and talked to him about
20 like, hey, why aren't you selling the NAPA product? Do
21 you remember that?

22 MS. LOFTIS: I'm going to object to that, Your
23 Honor.

24 THE WITNESS: Well, I think the answer --

25 MS. LOFTIS: That question was asked and it

1 was answered.

2 THE COURT: I will allow the clarification.

3 THE WITNESS: So the topic came up because we
4 were talking about stocking and nonstocking batteries.
5 Okay. And so when I -- I did not say that the
6 distribution center got mad. That may have been something
7 that Jay said when he was on the stand, and I wasn't privy
8 to those conversations. What I was saying is he has the
9 right to stock any product because we don't have franchise
10 laws.

11 Q. And I want to get to the question of whether he was
12 selling NAPA stuff mainly, and whether you agree with that
13 in a moment, but for now I have a very straight question.
14 An example of a conflict that you had was a very simple
15 one where NAPA contacted him because he made a decision to
16 sell a nonNAPA line of batteries; fair?

17 A. Yes, and I believe that the contact would be what
18 happened, you know, what's going on, what do we need to
19 do? But once again, that would have been between most
20 likely my general manager and him. I wouldn't have been
21 part of those conversations.

22 Q. And even in the situations where there was some kind of a
23 business disagreement or conflict, it is still your
24 opinion from firsthand knowledge of working with him, that
25 your words to describe him would be that he was a

1 reasonable, straightforward person?

2 A. Yes, and I do believe he would probably add in there
3 stubborn, you know, so when he decided something, that we
4 would go that direction with it. But as far as our
5 independent owners, all of them are hard working. They
6 wear several hats. They are inventory control managers.
7 They handle their employees, and they make sure that they
8 have the right inventory and all of those things, and
9 so...

10 Q. And I don't want to ask about everyone, but specifically
11 what you knew about him, Jay Coogan, the person that was
12 in the Colville store?

13 A. Sure.

14 Q. You said stubborn?

15 A. That would be his term.

16 MS. LOFTIS: Objection, Your Honor.

17 THE WITNESS: He has told me before he is
18 stubborn.

19 MS. LOFTIS: I object on relevance. It's
20 character testimony.

21 THE COURT: I don't see what character has to
22 do with it.

23 MS. LOFTIS: And can she take that down?

24 THE COURT: If you would take that down. I'm
25 more interested in the specifics of their relationship,

1 not her observations of his character, be it good or ill.

2 MS. DEAN: I will make it more specific.

3 ///

4 BY MS. DEAN:

5 Q. There is a suggestion, I think you were here for it, that
6 he was the type of person that would say, these came in
7 from the NAPA store and --

8 MS. LOFTIS: Your Honor --

9 BY MS. DEAN:

10 Q. -- actually he got them from eBay, do you remember that?

11 A. I remember the question.

12 THE COURT: Whoa, whoa, whoa.

13 THE WITNESS: I'm sorry.

14 THE COURT: Relevance objection?

15 MS. LOFTIS: Witness bolstering.

16 THE COURT: There is no commenting on another
17 witness. She can tell what she knows, and what he did,
18 but she is not going to comment on another witness's
19 testimony. That's improper. Sustain the objection.

20 BY MS. DEAN:

21 Q. In terms of what you knew and what you did, you found him
22 in all business matters to be straightforward?

23 A. With my direct relationship with him, yes, he was
24 straightforward.

25 Q. If we want to know how the company you worked for, Genuine

1 Parts Company, assessed Jay Coogan before this lawsuit,
2 they had a program to identify people that were excellent,
3 true?

4 A. True.

5 Q. You are familiar with this ring?

6 MS. LOFTIS: Your Honor, I'm going to ask what
7 the relevance of this is. It is witness bolstering.

8 THE COURT: I'm not sure that it is. I will
9 hear this answer.

10 THE WITNESS: Sure. So Genuine Parts Company
11 has a program called a Five Star Program, and it's been
12 going on for a few years, maybe 10, 15 years. And so this
13 may be preceding some of the information. However, what
14 it is, is it's a way to honor the customers that we have
15 and there is criteria. So, because we don't have a
16 franchise agreement, there are things that are really
17 important for the brand, and that's what NAPA is, it's a
18 brand. And so when our jobbers -- some of the things that
19 we ask them to do on the list to become Five Star worthy,
20 they have a purchase increase, which usually also means a
21 sales increase. They have to have so many people that are
22 ASE certified in the store, and that means they are
23 technically certified with a national certification. They
24 make sure that the outside of the store is painted in the
25 brand paint, the interior is done with planograms and

1 whatnot in what would be recommended. And there is
2 probably a couple of more scenarios, you know. So they
3 would get so many points for each one of those things. So
4 if they have a six percent sales purchase increase, they
5 paint the exterior of their store. If they set up so many
6 planograms they get points for each one of those. And if
7 they meet the point criteria, then they are given that
8 award.

9 Q. Sales of what?

10 A. Excuse me?

11 Q. Sales of what?

12 A. Purchases, actually.

13 Q. What?

14 A. What? NAPA auto parts.

15 Q. From whom?

16 A. The distribution center.

17 Q. It's an excellent award, as stated by the name, in part
18 determined because you are selling your stuff, the NAPA
19 stuff, right?

20 A. Yeah. They are purchasing the NAPA stuff, yes.

21 Q. How many times was he awarded, if you know, the Five Star
22 Excellence Award for his service at NAPA stores?

23 A. I personally don't know. I think he testified to four or
24 five.

25 Q. Are you familiar -- Well, let me go to the Power Point

1 now. I want to talk about just a few basic things. You
2 work for the Genuine Parts Company in the distribution
3 center?

4 A. In Spokane, yes.

5 Q. Their headquarters are in Atlanta?

6 A. Yes, ma'am.

7 Q. They sent products from NAPA distribution centers which
8 are located throughout the country, and one of them is in
9 Spokane?

10 A. Yes, there is 58, I believe, across the country.

11 Q. And then part of that chain of distribution is they send
12 parts to different NAPA stores throughout whatever region
13 they are in?

14 A. Yes, ma'am.

15 Q. Okay. And in terms of understanding what particular parts
16 were sold in Colville versus Kettle in the years in the
17 60s, 70s and 80s, did you do any research in order to tell
18 us about that?

19 A. No, because I wasn't asked to.

20 Q. No one ever asked you to do that?

21 A. Neither did you. I mean, in your deposition I didn't see
22 anything like that.

23 Q. You don't recall specifically being asked and being told
24 you didn't know, and no one told you then to look?

25 A. No. What I was told is I was talking about the

1 relationship, and being able to explain the relationship
2 between the distribution center, the independent owner,
3 and then their customer and how that all correlates.

4 Q. And in terms of understanding that in the years of the
5 60s, 70s and 80s, as it relates to distribution of
6 asbestos products, you don't know anything about that?

7 A. No, ma'am, I don't.

8 MS. DEAN: Your Honor, at this time we do
9 request that that instruction be given.

10 THE COURT: Ladies and gentlemen, we will take
11 our afternoon recess and the lawyers and I will go over
12 this.

13 (The following proceedings were held
14 outside the presence of the jury.)

15 THE COURT: Ms. Dean

16 MS. DEAN: Your Honor, the legal basis for the
17 instruction was something that Mr. Adams had actually
18 researched.

19 THE COURT: Go ahead, Mr. Adams.

20 MR. ADAMS: Sure, Your Honor. Just a couple
21 of quick points. You asked us all to submit a four-page
22 briefing on the issue of --

23 THE COURT: And I was grateful that you heeded
24 my limits.

25 MR. ADAMS: And I don't want to be petty, but

1 J-MM complied, Victor complied, the plaintiffs complied,
2 and the GPC brief, five pages.

3 THE COURT: Go ahead, Mr. Adams.

4 MR. ADAMS: So in the brief I think the
5 argument was that it was an improper comment on the
6 evidence to give the instruction. We amended the
7 instruction. It's attached as Exhibit A to our motion.
8 It makes no mention of Byron Frantz, Ms. Brewer or any
9 defendant by name. We took that out. It's simply an
10 instruction on what a corporate representative is, and how
11 they are to be prepared.

12 THE COURT: And of course, I have left that in
13 my chambers, so I will tell you what, why don't we take
14 about ten minutes of a recess and I will come back out and
15 we will hash this through. I just left the paperwork back
16 in my chambers, and so we will be at recess until 3:00.

17 (Court at recess.)

18 THE COURT: Two minutes.

19 MR. ADAMS: We just want the proposed
20 instruction. It's supported by the laws and the facts,
21 and it's necessary because Ms. Dean just asked Ms. Brewer
22 about the most fundamental issue in any asbestos case
23 every time: Did your product contain asbestos and when.
24 What was the relationship between the NAPA distribution
25 stores and the Kettle Falls store with respect to

1 asbestos-containing products. And Ms. Brewer, sitting
2 here as GPC, said she didn't know and she hadn't looked.

3 THE COURT: Do you perceive the distinction
4 between 30(b)(6) requirements and 43(f) requirements?

5 MR. ADAMS: There is a distinction. The case
6 law is absolutely clear, which we attached, or we
7 referenced in our brief. It's the --

8 THE COURT: I read that case.

9 MR. ADAMS: It's the Brazos case.

10 THE COURT: But that's a Sixth Circuit case.

11 MR. ADAMS: But it's highly persuasive
12 authority and it's directly on point. If you look at
13 page 3 of GPC's own brief, the first footnote they say
14 30(b)(6) in federal court and 30(b)(6) in Washington are
15 nearly identical. Federal case law is highly persuasive.
16 That's in GPC's.

17 THE COURT: This isn't 30(b)(6). We are
18 taking about 43(f).

19 MR. ADAMS: If you look at the Brazos case, it
20 said explicitly that the corporate representative
21 testifying at trial, not at a deposition, at trial,
22 exactly what we have here, it says that corporate
23 representative is not just testifying about personal
24 knowledge. They are testifying vicariously about the
25 corporation's own knowledge and perception and subjective

1 beliefs. The corporation's own knowledge, perception and
2 subjective beliefs are fair game, and most importantly,
3 the witness must be prepared on those topics by the
4 corporation. That's the Brazos decision. It's basically
5 three key sentences, three key paragraphs at page 434.

6 THE COURT: Right.

7 MR. ADAMS: And so our instruction is based on
8 that clear, directly on-point case law.

9 THE COURT: Thank you, Mr. Adams.

10 MR. ADAMS: And the case --

11 THE COURT: Two minutes. I read the brief,
12 and so --

13 MR. ADAMS: Thank you, Your Honor. Okay.

14 THE COURT: Ms. Loftis.

15 MR. OSBURN: Well, Mr. Hanrahan was going to
16 do this, and he didn't show up.

17 THE COURT: Whoever is up next.

18 MR. OSBURN: It would be here. Your Honor is
19 correct that there is a difference between 30(b)(6) and
20 43(f). As we cited in the brief, Judge Pechman of the
21 Western District of Washington recently wrote, "Defendant's
22 obligations under 30(b)(6) are fulfilled. The rule
23 contains no language compelling the corporate
24 representative's testimony at trial."

25 Now, we have -- I don't know if you have got a

1 copy of the Sixth Amendment notice that plaintiff gave,
2 and the Exhibit A and list of agreements and discussion
3 about what Ms. Brewer would testify to in the deposition,
4 and she did.

5 THE COURT: Sure, that's part of 30(b)(6).

6 MR. OSBURN: That's part of 30(b)(6).

7 THE COURT: And so what if a corporate
8 representative is, you know, ordered under notice, under
9 CR 30(b)(6), and they don't know anything about it,
10 haven't done any research, and don't have a thing to say
11 about the issue at hand, but they are there as a party?
12 What is to be done at that point?

13 MR. OSBURN: They are there as a party. There
14 is actually a few court cases that talked about it. There
15 was a decision that said it was actually error to compel a
16 corporate witness when they didn't have any knowledge of
17 what was going on in the case generally.

18 THE COURT: The seminal case in Washington is
19 Campbell vs. A.H. Robins, 32 Wn.App. 98. That is
20 definitely not the law, but they can compel 12 corporate
21 representatives. That's not -- my question to you is:
22 How is the Court to handle, let's say, and this is an
23 extreme example, that they trot somebody up here as the
24 corporate representative. It's some young person from the
25 mail room, if they still have them, which didn't know

1 anything about anything, but they are the corporate
2 representative. How --

3 MR. OSBURN: That's not what we have.

4 THE COURT: But we are simply talking about a
5 matter to the degree because we do have a witness who
6 doesn't know anything about much of the information that
7 is being inquired of her.

8 MR. OSBURN: But she knows about the
9 information that she is supposed to know about. She has a
10 certain knowledge base that talks about stores. I mean,
11 this is the Exhibit A factors, stores in the northeastern
12 section of Washington State and issues specific to the
13 Coogan lawsuit regarding to NAPA GPC. Discuss Jay
14 Coogan's testimony including what GPC/NAPA knows of his
15 relationship and habits in northeastern Washington.
16 Everything they know about Jerry Coogan Excavating.
17 That's the subject of testimony.

18 THE COURT: I read that.

19 MR. OSBURN: She knows those. That's what
20 she's --

21 THE COURT: You get one minute at the end, Mr.
22 Adams.

23 Mr. Massenburg, I know your brief points out a
24 little different spin on this. Your corporate
25 representative is called by deposition.

1 Ms. Lin, I'm sorry. I don't mean to ignore
2 you. Are you on base here?

3 MS. LIN: It seems that you have already
4 understood our argument. We adopted GPC's legal argument.
5 The jury instruction is legally unsupported. But as to
6 J-M Manufacturing, it's just factually unsupported. They
7 designated testimony over our objection taken in a case in
8 Texas, so it was -- it wasn't pursuant to Washington's
9 30(b)(6) or 43(f). It went to Texas law, and so...

10 THE COURT: There was also prior sworn
11 testimony from a party, so that part -- I understand that
12 your situation is different and, you know, because of the
13 witness as rolled out you are probably going to have this
14 issue with your representative, but what I do want to hear
15 from you, if you have a position, and what I heard is that
16 you just adopted Genuine Parts --

17 MS. LIN: Their legal argument.

18 THE COURT: That's cool, if that's what you
19 want to do.

20 MS. LIN: Our position is that the proposed
21 jury instruction is legally unsupported. There is no
22 support in the Washington case law for the giving of this
23 instruction, but as to J-M Manufacturing, it's just
24 factually incorrect.

25 THE COURT: Thank you.

1 MR. WALDEN: Your Honor --

2 THE COURT: Mr. Ricketts wrote a brief. Are
3 you going to let him talk?

4 MR. WALDEN: We join GPC's motion is basically
5 what we did. Of course, our corporate representative
6 hasn't been called in any way, shape or form yet in the
7 case. We do believe that this particular instruction, if
8 given, constitutes a comment on the weight of the evidence
9 with regard to what the corporations were required to do
10 for trial testimony from a live witness, and we don't
11 think that that is correct.

12 THE COURT: Okay. Thank you.

13 You get one minute, Mr. Adams.

14 MR. ADAMS: To answer the Court's question
15 about what happens if a corporation brings to trial a
16 witness who doesn't know anything and only testifies from
17 personal knowledge, it's a nonappearance and the Court
18 enters default judgment against the defendant.

19 THE COURT: Well, I can presume what your
20 response is to that. Here is my concern, and I read
21 Campbell vs. A.H. Robins, which is the lead case of
22 remarkably few cases on CR 43(f) in Washington State. It
23 gives the trial court the authority the demand the
24 presence of out-of-state, even out-of-country corporate
25 representatives. In fact, the trial court got reversed

1 for not doing that. Judge Reingold, who was speaking for
2 the Court of Appeals at that time, said that corporations
3 basically because of their involvement in the litigation,
4 are obliged to have people here. What it doesn't say is
5 that it's co-extensive with the parameters of CR 30(b)(6)
6 and, in fact, distinguishes 30(b)(6) from the corporate
7 representative issue in large part because they are two
8 different things. One is a discovery rule and the other
9 is a rule related to appearances of parties of trial.

10 So I have not found anywhere in Washington law
11 where a -- where an instruction such as that proposed by
12 plaintiffs in this case has been given. The purpose of
13 jury instructions is to, in the aggregate, allow each
14 party to have a fair opportunity to argue their case, and
15 I don't see that in this particular case the plaintiff, or
16 any of the parties frankly, would be prohibited from
17 arguing that they brought this witness in here, she really
18 didn't know anything. You know, they weren't -- they
19 weren't responsive to questions, whatever it was that
20 makes you feel that it would improve your position in the
21 jury's evaluation of the evidence.

22 Instructions are interpreted as a whole, and
23 they are generally fair if they are correct statements of
24 the law, and they give each party an opportunity to argue
25 their theory of the case.

1 My concern here, as I understand you have
2 cited the Fifth Circuit case, but my concern here is this
3 is more nuance than just a corporate representative coming
4 in from the mail room who doesn't know anything. We have
5 two corporate representatives in this case, which is
6 entirely permissible. In Robins there were 12, so two
7 doesn't seem to be a stretch. And before I go on apropos
8 to your comment, Ms. Loftis, in Robins they allowed both
9 the witnesses to be subpoenaed and designated in CR 43(f).

10 But what it doesn't say is that there is some
11 method that the jury is going to be instructed by which
12 they are supposed to filter the testimony of the corporate
13 representative. And in particular in this case where we
14 have two corporate representatives, one of whom was
15 apparently to be brought in on the broad issue of what the
16 company knew, when they knew it, what kind of warnings
17 they gave, what kind of instructions they gave to the
18 jobbers or to the other employees at Genuine Parts, and
19 then this witness, who is sort of a mixture of fact
20 witness, because of her relationship with Mr. Jay Coogan,
21 and a corporate representative, because she worked for
22 Genuine Parts Company for 32 years.

23 I don't think that holding her to the kind of
24 knowledge about what, you know, what warnings were given,
25 you know, and what was known in the 70s when she was in

1 grade school, while the corporate representatives often
2 have to research corporate history because that's why you
3 have a representative, and people die and move away, I
4 don't think that it impedes the plaintiff's ability to
5 argue that she couldn't answer questions, and therefore,
6 you know, it was her testimony somehow coming short of the
7 level of proof that is needed by Genuine Parts to have a
8 defense to the various issues that are before the jury.

9 I don't think that that is impeded by the
10 failure to give the instruction. I'm very reluctant to
11 instruct the jury about how they are to view any
12 particular witness's testimony. There is one jury
13 instruction in the entirety of the pattern instructions
14 that talks about what a witness is supposed to know, and
15 how jurors are supposed to interpret that witness's
16 testimony. It's the law about an attending physician in a
17 worker's compensation case which is entitled to special
18 consideration, and you can read through the instructions
19 until you have gone start to finish and you won't find
20 other one that talks about how jurors are supposed to
21 interpret the testimony of witnesses. So that's my
22 ruling, and we will go from there.

23 MS. LOFTIS: Your Honor, and if I could be
24 heard on a different issue?

25 MR. ADAMS: I have another issues.

1 THE COURT: Okay. Go ahead, Mr. Adams, and
2 then Ms. Loftis.

3 MR. ADAMS: I understand and appreciate the
4 Court's ruling. I'm not going to reargue it. The only
5 thing I will say is that there are three paragraphs in the
6 case that deal with the exact issue the Court is
7 struggling with: What does 30(b)(6) mean at trial, and
8 they answer the question unequivocally in our favor, and
9 it's a part of this instruction, so I would only direct
10 the Court of those three paragraphs.

11 THE COURT: And I read the case. It was an
12 interesting case, but thank you, Mr. Adams. I thought you
13 had one more --

14 MR. ADAMS: I had one more issue, a separate
15 issue.

16 THE COURT: What is your separate issue?

17 MR. ADAMS: There were some questions about
18 the credibility of Jay Coogan directed to Ms. Brewer.

19 THE COURT: And that's bolstering or
20 commenting on -- you know, one witness is not permitted to
21 comment on the testimony of another witness. You can
22 comment on opinions if, you know, if an expert witness has
23 a different opinion, you know, Dr. Smith says one thing,
24 you say what do you say in response to that, and that's
25 okay. But when it comes to the credibility of the

1 witnesses and whether one witness is more or less
2 believable than the other, and why shouldn't we believe
3 one witness based on the other witness's observation of
4 that person's character or their reputation for
5 truthfulness, can't do that.

6 MR. ADAMS: The only reason, and I understand
7 that we don't want witnesses talking about character of
8 other witnesses at trial. The only problem is that door
9 has not just been opened, but it's been knocked down with
10 a sledgehammer. Mr. Coogan, Jay Coogan, has been accused
11 of getting on the witness stand, raising his right hand
12 under penalty of perjury, talking about catalogues that he
13 got from his store and that was all a lie because he
14 really got them from eBay.

15 THE COURT: I understand that, but this
16 witness doesn't know whether he got them from eBay or had
17 them in the store, and her impression of Mr. Coogan's
18 character or his reputation for truthfulness and honesty
19 is irrelevant. I mean, you know, Mr. Jay Coogan testified
20 about circumstances by which he came into possession of
21 those catalogues, and without any particular evidence it
22 was suggested that he got them on eBay, or from some other
23 source. You can argue that if you would like, but this
24 witness has no knowledge of where Mr. Coogan obtained --
25 unless she does. I mean, that would be a different

1 situation, I suppose, that you would ask the company
2 distributed such information. But where we got the Victor
3 catalogue from 1955 is something that I have serious
4 doubts about whether this witness has personal knowledge
5 of.

6 MR. ADAMS: Thank you, Your Honor.

7 MS. LOFTIS: Your Honor, I hope this is the
8 last error that I have to report to you, but that witness
9 subpoena that we gave you, they were absolutely right, he
10 was not on our witness list, but there is another witness
11 that is, and we will give you an updated subpoena on
12 Monday. We have no intention of trying to serve the
13 subpoena that you signed, so I apologize.

14 THE COURT: Well, thank you. Better now than
15 later. Thank you, Ms. Loftis.

16 If we can just have the jury back, Merri.

17 MS. LOFTIS: Can Ms. Brewer go back and resume
18 her seat?

19 THE COURT: Yes, she can go back and resume
20 her seat.

21 (The following proceedings were held
22 in the presence of the jury.)

23 THE COURT: You can be seated.

24 Ms. Dean, you may proceed.

25 MS. DEAN: At this time we are marking as

1 Exhibit 237, which is the notice of deposition for
2 Ms. Brewer.

3 THE COURT: Okay.

4 MS. DEAN: May I approach?

5 THE COURT: You may.

6 BY MS. DEAN:

7 Q. Ms. Brewer, you remember one of the first questions I had
8 today was that when we first met I was interested in
9 speaking to you as the corporate representative of the
10 company, and you acknowledged that you were there in that
11 role. Do you remember that?

12 A. As a corporate witness, yes. There were going to be a
13 couple of them.

14 Q. And you understood that there was specific topics that we
15 really wanted to learn about and that they were listed,
16 right?

17 A. I understood from the information that I had was that you
18 were interested in the -- because we had Byron Frantz
19 coming as a corporate witness to handle all of the
20 friction information and all of that, that I was basically
21 just going to talk about the relationship between Genuine
22 Parts Company and independent stores and how we helped
23 them service their customers, yes.

24 Q. And the one for you, as opposed to Mr. Frantz, was related
25 to your deposition that was taken on November 16th of last

1 year, right?

2 A. Right.

3 Q. And you understood that understanding the relationship
4 from the distribution center to the Kettle Falls and
5 Colville stores was something that we explicitly wanted to
6 know and understand?

7 A. Sure, it was -- Jay Coogan had only been an owner since
8 '92, so I felt like I could speak to that, and I do
9 understand the inventory distribution, how that works
10 between the distribution center and the independent
11 stores. I just didn't understand the friction part of it
12 because I really felt that Byron Frantz was going to help
13 you with that.

14 Q. I don't mean the friction part. What I'm interested in is
15 the relationship, not just when Jay Coogan was an owner,
16 but in the 60s, 70s and 80s, that time frame, when Doy
17 Coogan was buying parts from NAPA. That's something we
18 have talked about and you understood, right?

19 A. Yes.

20 Q. Okay. And if it's helpful to look at what I have just
21 handed you, it was explicitly indicated that being a
22 corporate representative we needed you to look at what the
23 company knew or reasonably had available to the
24 organization, right? That was told to you in writing
25 before we started?

1 A. Yeah, I think I was going off the information from
2 attorney information. I don't know that I actually saw
3 this piece of paper. I honestly don't remember, because
4 it's been quite a few months ago.

5 However, yes, I do understand, but I also
6 understood that Byron Frantz would be able to help you
7 with all of those questions that had to do with corporate
8 decisions and that information. That I was really just
9 talking about the relationships in Spokane so you had a
10 local flavor, because Byron, being from Atlanta, not
11 visiting Spokane more than once, wouldn't be able to talk
12 about Jay and Nancy and our distribution center
13 relationship.

14 Q. And I think you are right about that. I want to know
15 about the local flavor, what was happening in Colville and
16 Kettle for decades around the 60s, 70s and 80s. No one
17 told you that you needed to look into that when you showed
18 up on November 16th?

19 A. Well, I think maybe some of that information would be that
20 I would have gathered that because of my dad being an
21 independent store, and working in the store. And so I
22 would have some information regarding the relationship,
23 you know. I mean, I was there when our general manager
24 came to visit. You know, I was there when we received
25 product from the distribution center. So maybe I wasn't

1 as broad-thinking as you were expecting, but I do
2 understand that stuff.

3 Q. In terms of the part that you know personally, I want to
4 follow-up for a moment with your dad, but beyond that, if
5 I want to know, like, what was written in Exhibit 237,
6 more than what you know if someone came in the store, but
7 what the company knew or had available to them. You were
8 never told, and this isn't a criticism of you, you were
9 never told to do that?

10 MS. LOFTIS: Your Honor, it's not in the
11 notice, and so you have got the notice in front of you.
12 There is an implication --

13 THE COURT: Why don't you just read what it
14 says, and we will be done with this.

15 MS. DEAN: Sure.

16 BY MS. DEAN:

17 Q. If you go to the second page, it says, "Defendant shall
18 make available a deponent able to testify as to the
19 matters known or reasonably available to the
20 organization." Do you see where I'm at?

21 A. No. I'm sorry.

22 Q. I can point it out, if you would like.

23 THE COURT: Go ahead.

24 BY MS. DEAN:

25 Q. Second page. "Defendant shall make available a deponent,

1 a person able to testify as to the matters known, or
2 reasonably available to the organization," and in this
3 case that's Genuine Parts Company, right?

4 A. Yes.

5 Q. No one asked you to do that?

6 MS. LOFTIS: Your Honor, I would like to read
7 the rest of this document.

8 THE COURT: Go ahead.

9 MS. LOFTIS: Thank you, Your Honor. If I
10 could have the ELM0. This documents read, "For purposes
11 of this request, defendant or GPC, which means Genuine
12 Parts Company/NAPA, topics upon which examination is
13 requested. No. 1, plaintiffs and defendants reach an
14 agreement by which, one, plaintiffs can use prior
15 deposition transcripts of GPC and NAPA in motion practice
16 subject to specific designation objections. Two, the
17 deposition of GPC/NAPA in this case will be case specific
18 information. Three, GPC/NAPA will produce their witness
19 to testify live at trial in this lawsuit.

20 "No. 2, subject to this agreement plaintiffs
21 will depose GPC/NAPA about stores in the northeast section
22 of Washington State and about issues specific to the
23 Coogan lawsuit related to NAPA/GPC.

24 "No. 3, GPC/NAPA must be prepared to discuss
25 Jay Coogan's testimony, including what GPC/NAPA knows

1 about his relationship with NAPA in northeastern
2 Washington.

3 "No. 4, GPC/NAPA must be prepared to discuss
4 everything they know about Jerry Coogan Excavating.

5 "And 5, GPC/NAPA must bring a document
6 custodian who can authenticate historical publications
7 produced in the lawsuit."

8 THE COURT: Thank you, Ms. Loftis.

9 You may proceed, Ms. Dean.

10 BY MS. DEAN:

11 Q. And for context, the date and time, November 16th, 2016,
12 that was the deposition of you. We talked to Mr. Frantz
13 on a different date and different subject, right?

14 A. Right. Uh-huh.

15 Q. And the witness wasn't Liane Brewer, it was Genuine Parts
16 Company, right? And if it's helpful --

17 A. Okay.

18 Q. And that's something that you thought you were doing, this
19 role of being a company representative?

20 A. Right.

21 Q. And in asking about that, we explicitly wanted to know
22 what the company knew, and you now understand that that is
23 written in the documents?

24 MS. LOFTIS: Objection, asked and answered.

25 THE COURT: I will allow it. Go ahead.

1 THE WITNESS: So, once again, I was under the
2 impression that normally one witness is provided from a
3 corporation. Okay. Byron Frantz was that witness that
4 would have all of the specifics, because he is based in
5 headquarters, and he would have more relevant information
6 about timing and decisions and all of that having to do
7 with asbestos.

8 From my representative, it was more the
9 northeastern Washington section. And so I think we were
10 trying to accommodate you by giving you two witnesses so
11 that we could give you as much broad information as we
12 could, because neither Byron or myself could comply with
13 this completely. And so I think that's why we came up, or
14 we were asked to have two witnesses.

15 BY MS. DEAN:

16 Q. So did you know that these subjects here were the ones for
17 you, and there were different subjects for Mr. Frantz?

18 A. No, I didn't know that.

19 Q. Even if we limit it to a subject that you felt like was
20 about the stores in the northeastern section of Washington
21 State and the issues specific to the Coogan lawsuit,
22 that's what you thought that you were there for, right?

23 A. Well, and Jerry Coogan Excavating would be very unlikely
24 that any corporate representative would personally know a
25 customer of one of our customers. I mean, there may be

1 some interaction in the field with our manufacturer rep,
2 but a corporate representative wouldn't necessarily know a
3 customer of a customer.

4 Q. Which is why I wasn't asking you about that. But the ones
5 I have highlighted I did. If I wanted to know for the
6 stores in northeastern Washington and the issue specific
7 to the Coogan lawsuit, that would be the Colville and the
8 Kettle store, right?

9 A. Yes, and I familiar with them.

10 Q. And if I want to know anything about what your
11 distribution center sold in the 60s, 70s and 80s to those
12 two stores, you don't have any personal knowledge of it,
13 right?

14 MS. LOFTIS: Objection; asked and answered.

15 THE COURT: This question was a little
16 different. I will overrule.

17 THE WITNESS: Okay. So given the sales
18 records, no. And I don't know that anyone would, because
19 there is no historical data kept for that period of time.

20 BY MS. DEAN:

21 Q. You were asked by me that you go to the Kettle store and
22 talk to anyone other than the owners' daughter, who is a
23 school teacher. Do you remember that?

24 A. Yes.

25 Q. And you admitted that you didn't do any research because

1 you didn't think that that was your role?

2 A. I guess I'm getting a little confused because you are
3 throwing, like, this big balloon when you haven't asked me
4 any questions that I haven't succinctly answered regarding
5 those stores. Were there questions in the depositions
6 that I missed regarding the stores?

7 Q. Yes. The question I super want to know --

8 A. Okay.

9 Q. -- is for every year that Mr. Coogan, Doy Coogan, was
10 buying brakes and gaskets and clutches in the 60s and the
11 70s and the 80s from the Kettle and Colville NAPA store,
12 that it's true that every one of those came from your
13 distribution center, and I want to know if the company
14 knows that either from your own files or because they did
15 something to find out what was reasonably available to
16 them by talking to anyone that was actually there in that
17 time frame?

18 MS. LOFTIS: I'm going to object.

19 THE COURT: I just need to hear the question.

20 MS. DEAN: And ma'am, you were never asked to
21 do that?

22 THE COURT: Okay. So that was the question.
23 Now I will hear the objection.

24 MS. LOFTIS: Move to strike the predicate,
25 Your Honor.

1 THE COURT: Well, she was reading from the
2 exhibit that everybody read from.

3 MS. LOFTIS: The predicate was that -- what
4 she said was that it's been proven that he purchased all
5 of this stuff from the NAPA store. That hasn't been
6 proven, Your Honor.

7 THE COURT: That's kind of the whole problem
8 here. You know, this witness apparently was requested to
9 find that out and didn't, but go ahead the answer the
10 question as best as she can. I will allow it.

11 THE WITNESS: Okay. So there is a couple of
12 things. First of all, because the independent store is
13 not franchised, like I said before, they have the ability
14 to buy from anyone. It's not like if we have a franchise
15 and we have a direct mandate that they can only stock
16 certain inventory. I know from my dad when the
17 distribution center didn't have something, we would go to
18 other suppliers in the area, and they weren't NAPA. I
19 mean, there is AJS and Brown Bearing and all of those
20 other locations that we source parts. And so I would say
21 from my knowledge that, no, that does not mean that Jay
22 bought everything 100 percent.

23 I did do a little research afterwards because
24 you were really concerned about that. You asked me a
25 couple of times in the deposition. So the best that I

1 could come up with is that I called the current owner of
2 the Colville store, because Jay and Nancy sold, and asked
3 them if they would run a report and it's called a RPT0 56
4 as far back as their computer would handle it.

5 Q. I want to interrupt you for a moment. Did you give that
6 report to your lawyer?

7 A. I showed it to her, yes.

8 Q. Do you have any idea why five weeks into trial I haven't
9 seen this?

10 MS. LOFTIS: She has never asked for it,
11 Your Honor.

12 THE COURT: Well, we will take that issue up.

13 THE WITNESS: Well, ma'am --

14 THE COURT: Wait.

15 THE WITNESS: Okay. I'm sorry.

16 THE COURT: We will take that issue up at
17 another time.

18 Continue with your examination of the witness
19 based on her responses.

20 THE WITNESS: But actually, I volunteered --
21 oh, I'm sorry. Not my turn.

22 BY MS. DEAN:

23 Q. When you and I were sitting in the same room and I wanted
24 to know what was available, you didn't have that, right?

25 A. No.

1 Q. I have no idea what you are talking about, even though we
2 sat across from each other and I had a chance to ask you
3 questions, right?

4 MS. LOFTIS: Your Honor, argumentative.

5 THE COURT: That is argumentative. We will
6 take up the issue of the document, if there is one, in due
7 course. Go ahead.

8 BY MS. DEAN:

9 Q. Let me ask you this: It is your view, not only from your
10 father's experience but from your years with the primary
11 place, that these small independent business owners would
12 get their parts from, you, you were primary, the NAPA
13 distribution center where you worked?

14 A. We would be their main supplier, yes.

15 Q. And in terms of being their main supplier in the years
16 that you have worked with Jay and Nancy specifically, you
17 can think of examples where they had you use other
18 suppliers, but they never dealt with brakes, gaskets or
19 clutches, correct?

20 A. Well, I can't say that, because I don't know what they
21 outsourced. That would have come from their accounts
22 payable, and they could have provided those as well. So
23 the only thing that I could do, and honestly, I just got
24 this report like three days ago, so it's not something
25 that I have been holding out, because I really thought

1 that there would be records in Doy's office. And the fact
2 that they were all removed surprised me. And so I felt
3 like all of that documentation would have been there
4 because he would have had receipts of what he bought in
5 billings where he, you know, billed somebody for digging a
6 well, and stuff like that.

7 So when I was sitting here and I realized that
8 that wasn't the case, then I thought that maybe it would
9 have been helpful if I were able to get the report, or a
10 report that would allow knowledge of as far as back as the
11 computer would hold of what Jerry got from Jay.

12 Q. Okay. And how far back does that go?

13 A. To 2001.

14 Q. So if I want to know in the 60s, 70s -- you said 2001?

15 A. Yes.

16 Q. So they stopped selling asbestos, according to Byron
17 Frantz, somewhere in 2001?

18 A. I was just trying to get information that would help, so I
19 understand all of that.

20 THE COURT: Would you wait for the question,
21 please, to be out. Don't interrupt.

22 THE WITNESS: I'm sorry.

23 THE COURT: Don't interrupt the questioner,
24 and I won't let her interrupt you.

25 THE WITNESS: Okay. I'm sorry.

1 BY MS. DEAN:

2 Q. Who is Mr. Kenner?

3 A. He would be the owner, I believe, of the Kettle Falls
4 store.

5 Q. Who is Mike Sparlin?

6 A. Mike Sparlin is a trainer. He actually was a manufacturer
7 rep for many years. He was a manager for Balcam, one of
8 our suppliers, and then he was a trainer that trained on
9 better business practices and stuff like that. I don't
10 know the scope of what he trained, but I did give you that
11 name at the deposition.

12 Q. He is retired but still lives in the same community that
13 you live in, right?

14 A. Yes.

15 Q. Whether it be Mr. Sparlin, Mr. Kenner, or any of the other
16 people that were doing hands-on work with some of the
17 products, you never contacted them to learn what they
18 knew, fair?

19 A. I did talk to Mike Sparlin after the deposition, yes.

20 Q. Is there any reason why you wouldn't have done that before
21 so that I could talk to him about what was going to be
22 reasonably available to the company?

23 A. Honestly, I didn't know the scope of the questions that
24 you were going to ask, so I apologize for that.

25 Q. What you do know unequivocally, as I understand it, is

1 that through your experiences, both with your dad being a
2 small business owner and on the other end, that you would
3 expect exactly what Jay said, and that is most of the
4 parts would come from your distribution center?

5 MS. LOFTIS: Objection, asked and answered.

6 THE COURT: Well, no. I will allow the
7 question and then move onto another topic.

8 THE WITNESS: So what I would say is that
9 Genuine Parts Company, like I said before, we have a
10 service bill rate, and on any given day, out of 100 parts
11 that are ordered, and there's probably 10,000 or 11,000
12 parts ordered per day, anywhere between four and
13 seven percent in that time frame when I was working on it,
14 because things were much more manual, there were seven --
15 out of every 100 parts that we didn't ship on any given
16 day. And so of those seven, if that was something for a
17 shop that was hanging a part, or installing a part, then
18 that store would source it from anyone else, either in the
19 area or out of the area for that matter, so that they
20 could get that customer taken care of. And so that
21 seven percent, even though we are a supplier to them
22 directly, if they have a customer they have to take care
23 of, and they are an independent owner, they are going to
24 get that part for that customer so they can get that car
25 off the rack.

1 Q. And my question is about what's normal, what's primary,
2 what's the typical, and it's to go to the distribution
3 center?

4 A. That would be one of the main distributors, yes.

5 Q. I want to hand you what we have marked as 238. These are
6 just some of the records that you were able to find when I
7 talked to you on November 16th about the NAPA store,
8 correct?

9 A. Yes.

10 Q. And that's a true and accurate copy of those records?

11 A. Yes.

12 THE COURT: I think we are at 238.

13 MS. DEAN: Yes, Your Honor. I seek to admit
14 238 into evidence.

15 THE COURT: Ms. Loftis.

16 MS. LOFTIS: Did you say this is an incomplete
17 copy?

18 MS. DEAN: It is a complete copy of five
19 different documents that they provided.

20 MS. LOFTIS: You just told her this was a
21 complete copy of the jobber file. Is it a complete copy
22 of the jobber file?

23 MS. DEAN: No, I didn't say that there were
24 things in here that after 2001 that have no relevance.

25 THE COURT: Let's just have the witness

1 identify the documents and, if she can identify them, you
2 can move them, Ms. Loftis can do what she is going to do,
3 and then we will follow the normal procedure.

4 BY MS. DEAN:

5 Q. So in looking at these, each of these are documents that
6 you provided to me that you were able to find from the GPC
7 file about the Colville auto parts store, correct?

8 A. Yes.

9 Q. And those are true and accurate copies of each of those?

10 A. Yes, they do appear to be.

11 Q. And there is three or four different letters that you
12 provided me that I have included there. Those are all
13 complete?

14 A. They look like ones that we provided, yes.

15 Q. There was other information, like banking information that
16 you provided that are not included?

17 A. Yeah, there were letters regarding some MOSDs, I believe,
18 where our old operation manager and Jay had some
19 communication back and forth. Maybe some signage drawings
20 I think I remember that had to do with an auto care store,
21 stuff like that.

22 Q. Okay.

23 MS. DEAN: Your Honor, we seek to admit that
24 as an exhibit.

25 THE COURT: Ms. Loftis.

1 MS. LOFTIS: We have no objection to entering
2 the complete copy of the file, but piecemeal we do have an
3 objection to.

4 THE COURT: Well, I don't want to enter the
5 banking information and the financial information without
6 redaction, and so if you want to introduce evidence when
7 its your time to talk to this witness that you believe are
8 necessary for ER 106, then you may certainly do so.

9 MS. LOFTIS: Okay. Thank you, Your Honor.

10 THE COURT: Thank you. Exhibit 238 will be
11 admitted.

12 (Exhibit No. 238 admitted.)

13 BY MS. DEAN:

14 Q. Finally I want to talk to you for a moment, just about the
15 mission statement for Genuine Parts Company in the
16 30 years that you have worked there and ask that --

17 MS. DEAN: For reference, Your Honor, this was
18 marked as 236.

19 THE COURT: I'm sorry. I didn't hear you.

20 MS. DEAN: This was marked as 236.

21 THE COURT: Okay.

22 BY MS. DEAN:

23 Q. And you can see there at the bottom that this is part of
24 the Genuine Parts Company website?

25 A. Is there something on here that you want me to

1 specifically look at?

2 Q. No, just to start off with, there is a reference at the
3 bottom, you can see the URL is referencing the Genuine
4 Parts Company that you worked for for 32 years.

5 A. Yes.

6 MS. DEAN: Your Honor, at this time we seek to
7 admit Exhibit 236 into evidence.

8 MS. LOFTIS: Your Honor, I would say relevance
9 to this. This looks like a jobs at Genuine Parts Company
10 document. I'm not sure what relevance it has.

11 THE COURT: Could I see it, please? Thank
12 you.

13 MS. LOFTIS: Your Honor, in the interest of
14 time, too, I would object to this as cumulative of the
15 testimony that has already been in this case through
16 Mr. Byron Frantz over a two-day period.

17 THE COURT: Well, I haven't heard any
18 testimony about it yet, so I'm not sure if it's
19 cumulative. It appears to be statements issued by Genuine
20 Parts Company related to the manner in which they deal
21 with their distribution centers, NAPA jobbers. I will
22 admit 236.

23 (Exhibit No. 236 admitted.)

24 BY MS. DEAN:

25 Q. This is the last thing I want to ask you about. On the

1 first page of the website, first of all, you can just see
2 the Genuine Parts Company logo at the top?

3 A. Yes, I do.

4 Q. And it indicates, again, at the bottom just the source,
5 that this came from the Genuine Parts Company website
6 section called "our culture"?

7 A. Okay.

8 Q. There in the section about "our culture" they have our ten
9 commandments that are referenced there. I want to ask you
10 about several of time. They say things like, be committed
11 to growth, be committed to service, and to the quality of
12 our service, be committed to customers. Do you see that?

13 A. Yes, ma'am.

14 Q. Okay. And it goes on to say be committed to your people
15 and commit to making the right decisions, even in the
16 toughest of times, and be committed to living up to your
17 commitments. Do you see that?

18 A. Yes.

19 Q. And these are things that a company, if they put on their
20 website, should actually do and practice, right?

21 MS. LOFTIS: I'm going to object, Your Honor,
22 for opinion testimony. She is here as a fact witness.
23 What companies should or should not do is really not in
24 the scope of her testimony.

25 THE COURT: I think you can go over the

1 document with her, but her opinions about what is stated
2 in the documents probably are only marginally relevant,
3 but you can continue to inquire about the exhibit.

4 BY MS. DEAN:

5 Q. Have you seen for years materials put out by Genuine Parts
6 Company the NAPA logo where it says "assurance of
7 quality"?

8 MS. LOFTIS: Objection, asked and answered at
9 length in Mr. Byron Frantz' deposition, Your Honor.

10 THE COURT: Well, the first question is
11 whether she has seen it, so that's a predicate question.

12 THE WITNESS: Yes, ma'am. Through your
13 catalogue that you showed me, but I have seen that, and I
14 think if you are asking me to comment on that, it's
15 Genuine Parts Company not only had a responsibility for
16 safety regarding asbestos, but they also had a
17 responsibility for stopping cars. So during this
18 transition when you hear the back and forth about whether
19 or not asbestos is or is not safe, and they are trying to
20 figure that out, they still had hundreds of thousands of
21 brakes out there, I should say cars, that needed to be
22 able to stop. And so that also had to be weighed into --
23 I'm sure, I mean, I'm guessing here, but I think that that
24 would be one of our corporation's biggest concerns that a
25 hundred percent of the time when they put a product out it

1 would stop the car.

2 MS. DEAN: Your Honor, I'm going to object to
3 being unresponsive.

4 THE COURT: The narrative would be stricken.
5 Please confine yourself to the question and don't
6 volunteer information that you think will or will not be
7 helpful.

8 THE WITNESS: All right.

9 BY MS. DEAN:

10 Q. In terms of the timeline of when good quality brakes that
11 had no asbestos, that is not something that you know
12 anything about?

13 A. No, that is what Byron Frantz was going to help you with.

14 Q. If a company has the logo, "we are assuring quality," do
15 they need to live up to that commitment if it doesn't?

16 MS. LOFTIS: Your Honor, argumentative, and
17 again, it's asking for her opinion testimony.

18 THE COURT: Well, it's argumentative.
19 Sustained.

20 BY MS. DEAN:

21 Q. There is another section that just talks about the
22 different GPC brands. Do you see that?

23 A. Yes.

24 Q. It says, "Genuine Parts Company is a diversified global
25 leader comprised of ten distinct business units," and

1 one of those units you are aware of is the Rayloc
2 division?

3 A. Yes, ma'am.

4 Q. And another is the NAPA division?

5 A. It's not actually NAPA. NAPA is just the brand that
6 encompasses it. So NAPA is an entity, a brand logo that
7 the service of pulling all of these parts together under.
8 So it's actually not part of Genuine Parts Company. I
9 think at one point I heard they maybe they had six or
10 seven employees under the NAPA part, and that's for the
11 branding part of it.

12 Q. When it says on their website they have ten distinct
13 business units, they list out ten distinct business
14 units --

15 A. But would that --

16 Q. -- on the next page, right?

17 MS. LOFTIS: Your Honor, she is being asked to
18 speculate about this document. I'm not sure she has even
19 seen it before.

20 THE COURT: If she doesn't know, she can say I
21 don't know. I mean, this is a document that, you know,
22 was provided to the northeast Washington distribution
23 group. It's on the website, and if the witness doesn't
24 know, she can say she doesn't know.

25 BY MS. DEAN:

1 Q. How many employees did you say that you believed NAPA had,
2 two to three?

3 A. Well, the brand, from what I understand, has that many.
4 Genuine Parts Company is the umbrella that encompasses
5 Rayloc and distribution centers and those kind of things.

6 Q. And in terms of what we have marked as an exhibit, on the
7 website, what is being referenced is that NAPA has been
8 around for a long time, has over 17,000 employees, right?

9 A. Yes, I see that.

10 Q. In terms of the mission statement where they reference
11 "our culture", I just have a few questions. Do you see
12 the section that says, "we are there for each other"?

13 A. Yes, I do see that.

14 Q. It says, there isn't a vehicle on the road that doesn't
15 need some repair work every now and again, and they give
16 examples, including brake pads, right?

17 A. Yes, ma'am.

18 Q. Our store goes beyond taking care of cars because we take
19 care of people too. At NAPA, we go the extra mile to lend
20 a helping hand, and offer support when people need it the
21 most. That's what they write there, right?

22 A. Yes.

23 Q. And losing a loved one is probably the time that people
24 need help the most?

25 MS. LOFTIS: Your Honor, argumentative.

1 THE COURT: It's argumentative. Sustained.

2 BY MS. DEAN:

3 Q. They also have a section where they claim they are
4 building communities, correct?

5 MS. LOFTIS: Your Honor, I'm going to object
6 on relevance, because this has no relevance.

7 THE COURT: I think we are wandering away from
8 relevance, Ms. Dean. If you have something related to the
9 specific products that are in issue, that's fine. But
10 opinion testimony about individuals or corporations is not
11 relevant.

12 BY MS. DEAN:

13 Q. I want to ask you about this part here that talks about
14 the NAPA auto parts, and that would include friction,
15 clutch and gaskets, right, correct?

16 A. Where are you reading?

17 Q. Just that the NAPA auto parts that have been sold
18 historically include brakes, clutches and gaskets?

19 A. Right. The parts sold through the distribution center in
20 Spokane would have included those products, yes.

21 Q. Okay. It says right after that, that our store goes
22 beyond taking care of cars, that we take care of people,
23 too. We go the extra mile to lend a helping hand and
24 offer support when people need it the most.

25 MS. LOFTIS: Your Honor, relevance, and it is

1 intended to inflame the jury.

2 THE COURT: Sustained. Well, I don't know
3 about that, but it's not relevant and so I'm going to
4 sustain the objection.

5 BY MS. DEAN:

6 Q. Have you gone back to the files for this small independent
7 owner of the NAPA store in Colville, Jay Coogan in the
8 90s, to figure out what his entire work history was, not
9 just with the store, but with the Kettle Falls store and
10 others?

11 A. No, no, I have not. I mean, I know that he worked at the
12 Kettle Falls store. He was a repair shop for a period of
13 time, and I believe that they carried inventory there from
14 what I heard, but see, that's the hard part about going
15 back. I don't know what is hearsay and what's accurate,
16 so I had to be very careful not to just take people's
17 comments and assume that they were gospel, and so I was
18 trying to be very careful not to do that.

19 Q. In terms of determining how many years he was at the
20 Colville store before he ever became an employee, or how
21 many years he was at the NAPA Kettle Falls store, did you
22 make any effort to verify that one way or another?

23 A. No, no, I didn't.

24 MS. DEAN: That's all the questions that I
25 have, given what I know now.

1 THE COURT: All right. There is no point
2 really in starting cross-examination. Ma'am, you can step
3 down.

4 Okay. It's Thursday again, ladies and
5 gentlemen, so it's time for me to again remind you about
6 the fact that I'm sure as time goes on people's curiosity
7 may be more and more piqued about what is going on and you
8 may face more and more inquiries about that. I would just
9 admonish you not to discuss the case with friends,
10 neighbors, coworkers, you know, visitors from afar, people
11 who want to know what you are doing. Hey, how have you
12 been? You can tell them how you have been, but you can't
13 tell them that what you are doing, other than you can say
14 you have been serving on a jury.

15 Please don't do any research. No social
16 research, no Wikipedia, nothing about any of the people or
17 the organizations or the products that we have talked
18 about. It is important that you make your decision in
19 this case based only on the evidence that I admit, you
20 know, as you may have perceived the admission of evidence
21 can be quite a technical enterprise. We are all doing our
22 best to make sure that you hear all of the relevant
23 evidence and don't hear evidence that isn't relevant or
24 for some other reason is excluded by the Court. And for
25 that reason, going outside the courtroom to gather outside

1 information can undo that work.

2 So have a great weekend. We are going to
3 start Monday morning at 9:30. 9:30, Monday morning.
4 Leave your notepads face down. We will secure them for
5 the weekend. Thank you very much. Have a nice weekend.
6 And you folks can go on back to the jury room.

7 (The following proceedings were held
8 outside the presence of the jury.)

9 THE COURT: In the event that anything comes
10 up, we will be here hearing civil motions in the morning
11 and sentencings in the afternoon if you need to drop
12 anything off.

13 There will also be another 50 people, or 75
14 people here, so you need to secure whatever it is that you
15 think that you need to secure. We are happy to store it,
16 but I'm a gratuitous bailee and I have no responsibility
17 for what happens to it. I will maintain the security as
18 best I can, and even if you want to put it back in
19 chambers, I'm happy to do that if you have electronic
20 equipment or what have you, but don't leave it out.

21 MS. DEAN: Your Honor, just very quickly, if I
22 could, the documents that she said she did have, pursuant
23 to our notice being accurate, I would just ask that they
24 be compelled to provide that today.

25 THE COURT: If that was part of the request in

1 the interrogatory, production of documents, that's a
2 continuing obligation. You can talk to Ms. Loftis about
3 that.

4 (Court at recess.)
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